



LAW DEPARTMENT

MEMORANDUM

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

This memorandum is made confidential by the attorney-client privilege. Distribution of this memorandum to anyone other than the person to whom it is addressed may make it subject to disclosure.

To: Sue Edwards, Assistant City Manager

From: Cindy J. Crosby, Assistant City Attorney *CC*

Date: February 25, 2016

Subject: Creative Content Incentive Agreement with Certain Affinity

Attached for your review and signature are originals of the above referenced document.

Background. The City Council approved the establishment of the Creative Content Incentive Program (CCIP) on May 15, 2014, with the approval of Ordinance No. 20140515-008. The ordinance allows for Chapter 380 economic development incentives to be provided to companies within the film, television, and digital media industries.

About the Project. Based on information from the Economic Development Department (EDD), the project complies with the CCIP Guidelines and is a project that will benefit the Austin gaming industry.

As the proposed incentive is less than the current City Manager's threshold level, per the Council approved guidelines no further Council action is required.

I have reviewed the agreement and approve as to form and legality.

After execution please contact David Colligan at extension 46381, for pick up.

Please feel free to contact me with any questions or concerns you might have.

Attachment: Agreement

CITY OF AUSTIN CREATIVE CONTENT INCENTIVE PROGRAM AGREEMENT

This Agreement ("Agreement") relating to the grant of City funds for the creation of a video game for global distribution ("Project"), is made between the **CITY OF AUSTIN**, a home rule municipal corporation of the State of Texas located within Travis, Hays, and Williamson Counties, Texas ("City"), and **CERTAIN AFFINITY**, authorized to do business in Texas ("Company") (collectively, the City and Company being herein called the "Parties").

RECITALS

1. The City has established a creative content incentive program to incentivize the production and post-production of films, commercials, games, visual effects and television shows located in the City limits.
2. Upon satisfactory completion of production and compliance with the terms of this Agreement, the City agrees to pay the Company an incentive calculated as a percentage of the actual wages spent locally.
3. The City is authorized by chapter 380 of the Texas Government Code and the Texas constitution to provide a grant of such funds to promote economic development, tourism and stimulate business and commercial activity in the City.
4. Company wishes to locate its Project in the City and comply with the terms of this Agreement in order to receive the incentive payment.

NOW THEREFORE, in consideration of the covenants and agreements of the respective Parties as set out in this Agreement, the Parties have agreed and hereby do agree as follows:

ARTICLE 1 PROJECT

1.01 **Project Description.** Company intends to employ Austin Area residents (as defined in this paragraph) to create the Project in the Austin Area. Austin Area means the Austin Metropolitan Statistical Area of Travis, Hays, Williamson, Bastrop and Caldwell counties. As applicable, during pre-production, production and post-production, Company shall only occupy, lease, or operate in permanent facilities (defined below) that are within the City's Desired Development Zone, such boundaries are identified in the Growth Concept Map (Figure 4.5) in the Imagine Austin Plan adopted by the City on June 15, 2012, or as subsequently amended, attached and incorporated by reference as **Exhibit "A"**. Incentives will not be paid for wages incurred for work to renovate or remodel permanent facilities. Production may occur within or outside of the Desired Development Zone boundaries. "Production" is defined as the period between the first and last days of creation of the Project, inclusive. "Permanent facilities" are defined as production office locations, film studio locations or any other support locations for the project that are not being used as a practical location for production.

1.02 State Approval. Prior to the Principal Start Date, defined as the first day of principal production, Company shall provide to City a copy of the eligibility letter issued by the State of Texas Film Commission. City hereby acknowledges that Company has presented such eligibility letter to its satisfaction and has thus satisfied this requirement. Company shall not be entitled to payment if such letter is not provided prior to the Principal Start Date or is withdrawn, revoked or otherwise found invalid by the State during the term of this Agreement.

1.03 Company Wages. Company estimates the wages to be paid to Austin Area residents employed by or directly contracted with the Company shall equal \$8,000,000.00 ("Wages"). The City's Incentive (defined below) is contingent on (1) receipt of proof of payment of Wages to Austin Area residents employed by or directly contracted with the Company; (2) a declaration of residency form, attached as **Exhibit "B"** completed by each worker; and (3) all workers working on the production solely for the Project as defined herein, are paid in accordance with the following provisions of this section 1.03.

- a. Company agrees it shall pay no less than union wages to all workers, and ensure all workers are provided benefits equivalent to the applicable union benefits, including worker's compensation and ensure that applicable company benefits are extended to same-sex partners. Extras, interns and production assistants are excluded from these requirements.
- b. For positions without a union equivalent wage, only those paid \$13.30/hour or higher may be included in the total wages paid to local cast and crew for the purposes of calculating the incentive amount.
- c. The City Incentive is offered only for Austin Area residents, employed by or directly contracted with the Company, performing work within the State of Texas. Work performed outside the state will not qualify, even if the work is directly related to the qualified production and is performed by Austin Area residents.

1.04 City Credit. Subject to publisher, network and/or guild restrictions and approvals, which Company will use its good faith efforts to obtain, Company shall display the City Credit, defined as the City logo designated and provided for by the City as shown on "**Exhibit C,**" and the following language at the end of each episode of the finished production: "Thank you to the City of Austin for its generous support of this production. Created in Austin, Texas, U.S.A." in all areas of production credit, produced in Austin and released by the Company in which it has control over the credit information. Company shall provide proof to the City of inclusion of the City Credit in each area of production credit it has sole control over or shall provide documentation of Company's good faith efforts to obtain approvals to display the City Credit in episodes in which it does not have control over the insertion of credit information.

1.05 Opportunities for Minority and Women-Owned Business (MBE/WBE) Participation. The City has implemented a program to certify vendors it uses as minority-owned, women-owned or small business enterprises in order to encourage equal opportunity in the marketplace ("MBE/WBE/SBE"). Firms are certified based on

meeting certain qualifications; however, the City makes no guarantee or warranty of the availability or quality of work performed by certified vendors.

- a. Prior to the first day of production, the Company shall contact the City's Small and Minority Business Resources Department ("SMBR") and schedule an informational person-to-person meeting no less than ten days prior to the first day of production.
- b. In the event that the Company is not successful in obtaining relevant MBE/WBE/SBE vendor information prior to Production, the Company will work with City staff to develop programming that will promote engagement and utilization of MBE/WBE/SBE firms for video game industry projects.
- c. Company shall provide a list of proposed scopes of work in the Project Information Form and continue to provide SMBR with new proposed scopes of work or materials to be obtained by the Company during its production of the Project in Austin. SMBR shall provide Company a list of vendors certified by the City as MBE/WBE/SBE vendors for the proposed scope of work or materials (the "Availability List").
- d. Cultural diversity is Austin's strength, and the City encourages the utilization of certified M/WBE vendors so that all of Austin's population can grow and benefit from the local economy. To the extent possible, the Company should contact and utilize vendors shown on the Availability List; however, the Company is not required to use such vendors.
- e. Within thirty days after completion of Project, the Company shall provide a written report to SMBR detailing which vendors are local, small or City-certified minority or woman owned firms, used for different scopes of works utilized on the Project, and amount spent or to be spent for the scopes of work. Within thirty calendar days of receiving Company's written report, SMBR shall provide a report to Economic Development Department assessing Company's performance regarding this section.

1.06 Educational Opportunities. To the extent possible, upon reasonable request by the City with sufficient advance notice, Company may coordinate with City by providing information to the City on opportunities and practical issues regarding minority- and women-owned business education, employment and contracting opportunities, and general participation in video game and digital industries.

1.07 Taxes, Licenses and Permits. Company shall be responsible for all sales taxes or any other taxes otherwise applicable to the Project. Company shall obtain, or require to be obtained, at its sole cost, all permits and licenses, including any permits required by the City's Special Events Ordinance and co-sponsorship agreements with the City, necessary to produce the Project. Company shall provide proof of authorization to do business in the state of Texas within ten calendar days of the Effective Date.

1.08 **Texas Government Code Chapter 2264.** In accordance with Chapter 2264 of the Texas Government Code, the Company agrees not to knowingly employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States (“**Undocumented Worker**”).

- (a) During the term of this Agreement, the Company shall notify City of any complaint brought against the Company alleging that the Company has employed Undocumented Workers.
- (b) If the Company, or a branch, division or department of the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received, together with interest at the rate of five percent (5%) from the date of each payment of an economic development grant, shall be repaid by the Company to the City not later than the one hundred twentieth (120th) day after the date the City notifies the Company of the violation.
- (c) The City shall recover court costs and reasonable attorney's fees incurred if it prevails in an action brought pursuant hereto to recover past economic development grants and interest. The Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom the Company contracts.

1.09 **Non-Discrimination Ordinances.** Company shall comply with all provisions of AUSTIN TEX., CODE Title 5. (Civil Rights), as amended, recodified or reenacted from time to time, relating to equal opportunity in employment and business practices. The City agrees to provide to Company from time to time upon its request in writing to the City therefor, consultation and assistance with compliance with said Code provisions.

ARTICLE 2 INCENTIVE PAYMENT

2.01 Company Obligations.

- a. The incentive payment is calculated as 0.5% of the wages paid to the Company's employees who have completed a Declaration of Residency Form (attached hereto as Exhibit B) and whose payroll address is within the Austin MSA (Travis, Hays, Williamson, Bastrop and Caldwell counties) for Production which occurs on or after the Effective Date of this Agreement, provided the Company demonstrates that it has completed the Project and complied with the terms of this Agreement.
- b. Within sixty (60) days after completion of the Project, the Company shall provide to the City a completed Creative Content Incentive Program Final Report attached as **Exhibit “D,”** and incorporated by reference for all purposes.

2.02 **City Obligations.** Subject to City verification, within ninety (90) days of receiving the completed Creative Content Incentive Program Final Report, provided the Company has demonstrated that it completed the Project and complied with all applicable

requirements, City shall pay Company the City Incentive in the amount up to \$44,000.00 in one lump sum. Partial payments will not be paid for incomplete projects.

2.03 Financial and Other Relevant Records. Company shall establish and maintain books, records, and systems of account relating to the wages paid on the Project, including hourly rate, number of hours, number of workers, and residency of workers. Company shall provide the City, including representatives of the Office of the City Auditor, other representatives of the City, and/or third parties contracted by the City, access to inspect its financial information and other relevant records only as it relates to determine satisfaction of the terms of this Agreement during regular business hours and at times mutually agreeable to the parties. Such financial information and other relevant records will be made available at a location in Austin, Texas. Such parties have the right to inspect all relevant records of the Company as are reasonably necessary to verify compliance with all requirements of this Agreement and limited to the information needed to confirm the information submitted in Exhibit "D" and including access to inspect content produced in order to confirm inclusion of the City Credit.

ARTICLE 3 TERM

3.01 Unless otherwise terminated as provided for in this Agreement, the initial term of this Agreement shall be from the Effective Date until completion of the Project (*i.e.*, completion of production) projected to be October 2, 2016.

3.02 Unless terminated earlier by either party, pursuant to a right stated in this Agreement for said Party to do so, or otherwise agreed to in writing by both parties, this Agreement will expire without further notice when the term expires.

ARTICLE 4 ASSIGNMENT AND SUCCESSORS

4.01 **Assignments and Successors.** Except under the circumstance whereby a third-party acquires substantially all of the assets of Company and Company provides written notice of such occurrence to the City no later than seven calendar days after completion of the acquisition. Upon receipt of notice of the new entity, City has the option to terminate this Agreement, and shall be responsible for payment for a completed Project and confirmation of compliance of all terms of this Agreement. Company shall not assign, transfer, mortgage, encumber or otherwise convey its interest in this Agreement or any other right, privilege, obligation or license conferred by this Agreement, either in whole or in part without the prior written consent of the City (which consent will not be unreasonably withheld). Any assignment or encumbrance without the City's prior written consent shall render this agreement voidable by the City.

4.02 Without limiting the obligations of Company under this Agreement, Company shall have the right and the authority to enter into contracting arrangements with any other person or entity (including without limitation the City or other City agencies) for the

provision of any goods or service required or allowed to be provided or performed by Company under this Agreement.

ARTICLE 5 INDEMNIFICATION

5.01 LIABILITY OF CITY. CITY IS NOT LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND TO ANY PERSON, INCLUDING DEATH, OR PROPERTY CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF COMPANY, OR OF ANY OF COMPANY'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, OR BY OR FROM ANY ACCIDENT, FIRE, OR OTHER CASUALTY. IN NO EVENT SHALL THE CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUE, GRANT FUNDS OR DONATIONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

5.02 INDEMNIFICATION. COMPANY AGREES TO INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR BODILY INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO CONSTRUCTION OF AN IMPROVEMENT OR THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH COMPANY AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

5.03 Neither party assumes the liability for the actions or omissions of the other party.

5.04 Waiver of Immunity. Nothing in this Agreement shall be deemed to constitute a waiver of any immunity or affirmative defense, which may be asserted by City or Company as to any claim of any third party.

5.05 Cause of Action. Nothing in this Agreement shall be construed in any manner, to create a cause of action for the benefit of any person not a party to this Agreement, or to

create any rights for the benefit of any person not a party to this Agreement not otherwise existing at law.

5.06 City shall not be entitled to enjoin, restrain, interfere or otherwise seek equitable relief in connection with the production, distribution, merchandising, advertising, publicizing, exhibiting or exploitation of the Project unless the carrying out of these activities in connection with the Project conflicts with any applicable Federal or State statute, regulation or other law, or any applicable City code or regulation.

ARTICLE 6 TERMINATION, DEFAULT AND REMEDIES

6.01 **Termination by the Company for convenience.** In the event the Company elects not to proceed with or complete the Project as contemplated by this Agreement, the Company shall notify the City in writing, and this Agreement and the obligations on the part of both Parties shall be deemed terminated and of no further force or effect. Company shall not be entitled to partial payment.

6.02 **Termination for Cause.** If either the City or the Company should fail in the performance of any of its obligations under this Agreement, such failure or omission to perform shall constitute an "Event of Default" under this Agreement. When an Event of Default occurs, the non-defaulting party shall provide the defaulting party with written notice of the alleged Event of Default, and allow the defaulting party a minimum period of ninety (90) calendar days after the receipt of this notice to cure such Event of Default, prior to terminating this Agreement, instituting an action for breach of contract or pursuing any other remedy for the event of default. If either Party to this Agreement fails to meet its obligations under this Agreement, and the non-defaulting party provides notice of the Event of Default as set forth below, and the Event of Default is not cured within the ninety (90) calendar day cure period, this Agreement may be terminated by the non-defaulting party after expiration of the ninety (90) calendar day cure period.

6.03 **Termination by the City for Public Safety.** The City shall have the right to terminate this Agreement without prior notice if Company's action or inaction results in an immediate threat to public health, safety and welfare and for which or the effects from which there is no cure.

6.04 **Company Remedy.** Company shall not be entitled to attorney's fees, costs, expenses, economic or non-economic damages or lost profits of any kind.

ARTICLE 7 NOTICES

7.01 **Notices.** Any notice, demand, request or other communication hereunder given or made by either party to the other shall be in writing and shall be deemed to be delivered whether actually received or not, when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties hereto at the respective addresses set out below, or at such other address as they may hereafter specify by written notice so given.

If to City: Economic Development Department, Director
City of Austin
301 West 2nd Street, 2nd Floor
Austin, Texas 78701

Copy to: City Attorney
City of Austin
301 West 2nd Street, 4th Floor
Austin, Texas 78701

If to Company: Certain Affinity
PO Box 302799
Austin, TX 78703
Attn: Geoff Yetter

ARTICLE 8 GENERAL PROVISIONS

8.01 **Effective Date.** Effective Date shall mean October 1, 2015.

8.02 **Compliance.** The Parties shall comply and conform with all applicable laws and all governmental regulations, rules, orders, and the City's Creative Content Incentive Program Guidelines in effect during the Term of this Agreement, including all applicable laws and regulations relating to labor employed in and relating to the operation of the Project.

8.03 **Interpretation.** In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

8.04 **No Third Party Rights.** The provisions and conditions of this Agreement are solely for the benefit of the City and COMPANY, and are not intended and shall not be construed to create any rights, contractual or otherwise, to any other person or entity.

8.05 **Open Records.** City shall only inspect documents supporting the information in Exhibit "D". Company acknowledges and understands that the City is required to comply with chapter 552 of the Texas Government Code ("Public Information Act"), and caselaw interpreting same. In the event that the City receives a Public Information Act request, the City will follow the requirements of the Public Information Act and request the opinion of the Texas Attorney General as applicable.

8.06 **Authority.** The Parties have the requisite corporate/governmental power and authority to enter into this Agreement and to consummate the transactions contemplated by it. This Agreement has been duly authorized by all necessary action on the part of each party and no other corporate, governmental or other action on the part of Company or City is necessary to authorize the execution and delivery of this Agreement. The

individuals executing this Agreement for Company and City have been duly authorized to execute and deliver this Agreement for and on behalf of Company and City and to bind Company and City to its terms.

8.07 No Partnership or Joint Venture. Neither City nor Company shall be responsible under the Doctrine of Respondeat Superior for the acts and omissions of its officers, agents, servants, contractors, subcontractors, or employees. Each Party acknowledges that it is solely responsible for its own activities and for all persons and property involved or used in connection with those activities; provided, however, that no provision of this Agreement shall operate or be construed as a waiver by either party of any immunity or defense from liability which it has or could be asserted under the doctrine of governmental immunity or any other immunity or defense which it has under law, now or hereafter existing.

8.08 Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. *Force Majeure means acts and events not within the reasonable control of the party, and which the party could not use due diligence to avoid or prevent.* Events of Force Majeure include, without limitation acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, breakdown of building systems or facilities, lightning, earthquakes, fires, storms, floods, and landslides. Force Majeure does not include economic or market conditions, which affect a party's cost, but not its ability to perform. The party invoking Force Majeure shall give timely and adequate notice to the other party of the event by facsimile transmission, telephone, or e-mail and then the party must promptly provide written notice of the Force Majeure in the manner required by this Agreement. The party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a party's performance is delayed by the event of Force Majeure, the parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event.

8.09 Invalid Provision. It is agreed that, in the event any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Company or City in connection with the rights and obligations contained in the valid covenants, conditions or provisions of this agreement.

8.10 Applicable Laws. The internal laws of the State of Texas shall govern this Agreement and the relationship created hereby. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this agreement shall be in Travis County, Texas.

8.11 Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

8.12 **Sole Agreement.** This Agreement constitutes the sole and only agreement of the Parties regarding the matters set forth in this Agreement, and cannot be amended or modified except by a written agreement approved by the Parties as required by applicable law.

8.13 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8.14 **Exhibits.** All Exhibits to which reference is made in this Agreement are incorporated in this Agreement in their entirety, whether or not actually attached.

8.15 **Time of Essence.** Time is of the essence of each provision of this Agreement.

8.16 **Survival of Indemnities.** Termination of this Agreement shall not affect the right of either party to enforce any and all Indemnities and representations and warranties given or made to the other Party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive such termination.

8.17 **Good Faith Dealings.** All parties will act in good faith in the preparation, execution, and resolution of any matter within the scope of this Agreement. These good faith acts shall be made in a lawful and ethical manner.

8.18 **Dispute Resolution.** In the event of a dispute between Company and the City regarding any term of this Agreement, the parties shall attempt to resolve the matter informally through the following mechanism: the City Manager and Company management, or their respective designees, shall meet to review and discuss the matters in dispute; if the City Manager and Company are unable to reach a mutual resolution, either party may submit the matter to a nonbinding, structured mediation procedure conducted by persons or organizations experienced in alternative dispute resolution (“ADR”) procedures as well as having expertise in the network television production and entertainment industries. The mediation may be requested by any party and shall be initiated within thirty (30) days from the date of the request unless extended by agreement of both parties. The alternative dispute resolution procedures utilized for the mediation shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the actual mediation. The mediator’s recommendations shall not be admissible as evidence in any subsequent ADR or legal proceeding, and shall be confidential to the extent allowed by law. If the matter is submitted to mediation and the matter is not resolved, an affected party shall be entitled to pursue any legal remedy available.

8.19 **No Implied Waiver.** No failure by either party to insist upon the strict performance of any obligation of the other party under this Agreement or to exercise any right, power or remedy arising out of a breach, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party’s right to demand strict compliance such term, covenant or condition or operate as a surrender of this Agreement.

EXECUTED by the authorized representatives of the Parties on the dates indicated below.

CERTAIN AFFINITY, a Texas For-Profit Corporation

CITY OF AUSTIN,
a home-rule municipal corporation

By: 

By: 

Sue Edwards, Assistant City Manager

Name: Majdleh Gharchi

Title: VP of Marketing and operations

Date: 2.25.2016

Date: 4/6/16

APPROVED AS TO FORM

By: 

C. Crosby
Assistant City Attorney

Exhibit A
City of Austin Desired Development Zone

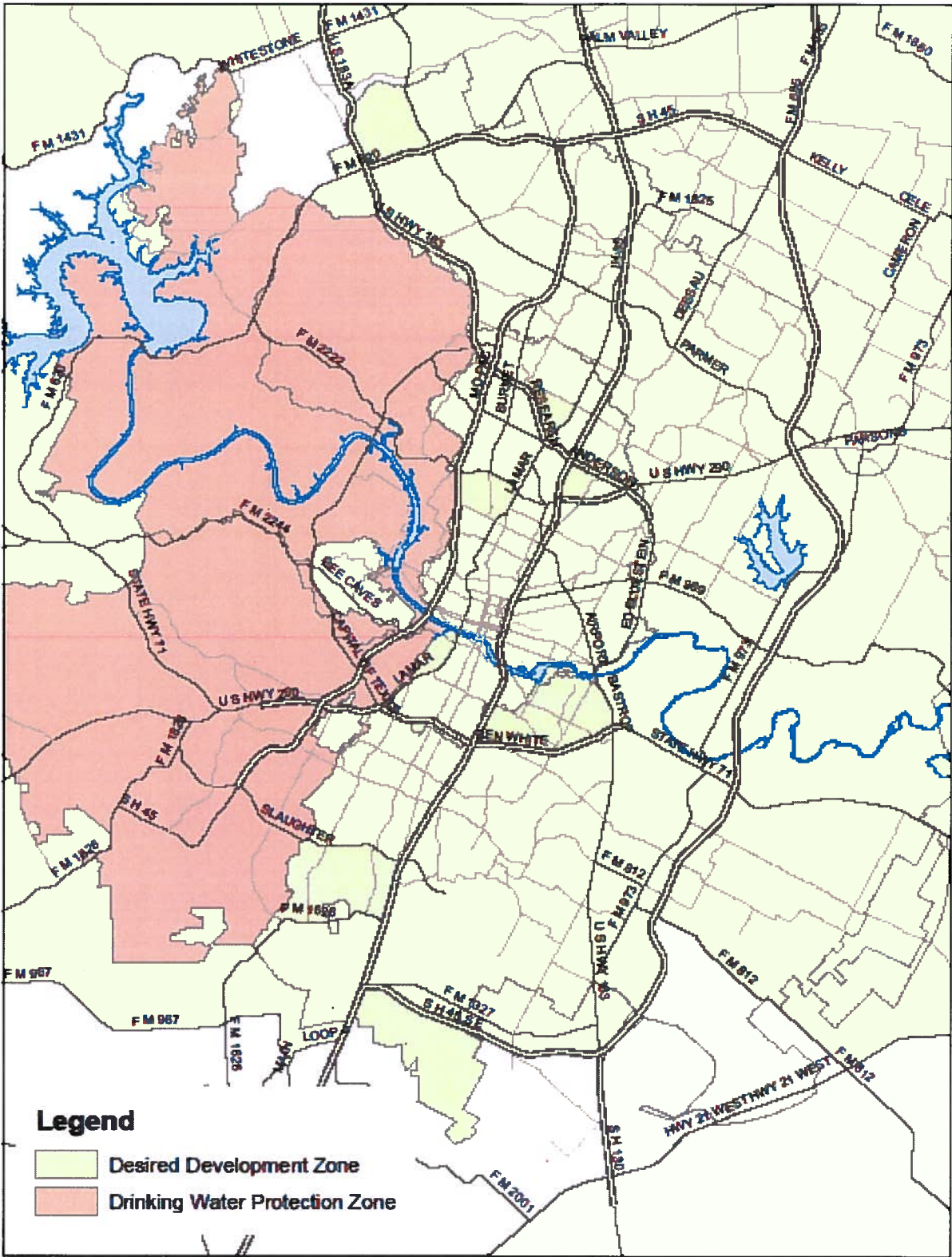


Exhibit B

Declaration of Residency Form

Production companies applying to the Austin Creative Content Incentive Program for an incentive payment that is based on wages or salaries paid to Austin area residents for work performed on a qualified production in Texas must complete this declaration of residency for each resident. The production company must retain this form.

SECTION I – PROJECT INFORMATION

Project Name: _____ Company Name: _____

SECTION II – EMPLOYEE INFORMATION

Employee Name: _____ Social Security Number (LAST 4 DIGITS ONLY): _____

Permanent Residence (physical address – **NO P.O. Boxes**): _____

City, State and Zip Code: _____ Telephone Number: _____

SECTION III – RESIDENCY VERIFICATION – *For the purposes of the Incentive Program, to be a permanent resident of Travis, Hays, Bastrop, Caldwell or Williamson county you must be domiciled in Travis, Hays, Bastrop, Caldwell or Williamson county. Your domicile is your permanent home; it is the place to which you intend to return after any temporary absence. You can have only one domicile. A change of domicile is established only by establishing a physical presence in a new location with intent to abandon your old domicile and make a home in the new location permanently or indefinitely.*

I am currently a permanent resident of Travis, Hays, Bastrop, Caldwell or Williamson county who has resided in Travis, Hays, Bastrop, Caldwell or Williamson county, and have possessed the document listed below, for at least 120 days prior to the first day of principal photography/production on this project.

Employee's Initials

You must present one of the following documents to a production company representative to verify the start of your permanent residence in Travis, Hays, Bastrop, Caldwell or Williamson county. If you cannot provide one of these three forms of evidence for the time period required, you cannot be considered a Travis, Hays, Bastrop, Caldwell or Williamson county resident.

Minors unable to provide residency documentation should have a Travis, Hays, Bastrop, Caldwell or Williamson county resident parent or legal guardian complete this section and note their relationship to the child in the signature box.

☐ Valid Texas driver's license Number: _____ or ID card showing current address: *(must be 8 digits)* Expiration Date: _____ *(MM/DD/YYYY)*

☐ A valid Texas voter registration VUID _____ County: _____
showing current address: (must be 10 digits)

☐ A valid student ID card from a Texas Institution of Higher Education showing current address (*college or university only*):

Number: _____ Institution: _____

I declare, under penalty of perjury, that I am a permanent resident of Travis, Hays, Bastrop, Caldwell or Williamson county. I have examined this document and to the best of my knowledge and belief it is true, correct and complete.

Employee's Signature (or parent's,
If employee is a minor)

Print Name (and relationship to minor, if applicable)

Date

SECTION IV – EMPLOYER VERIFICATION

I declare, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, and that the above-listed document(s) appear to be genuine and relate to the employee named.

Signature of Production Company representative

Print Name

Date _____

Chose and Complete One

Exhibit C
Required Credit Logo



Exhibit D

Creative Content Incentive Program Final Report

Project:

Project Type:

Production Company: Certain Affinity

Report Date: _____

1. Actual Production Start Date: _____

2. Actual Production Wrap Date: _____

3. Total Austin MSA production expenditures: _____

4. Estimated wages to be paid to Austin MSA residents
by Certain Affinity (from PIF): \$8,000,000.00

5. Number of Jobs created for Austin MSA
residents: _____

6. Actual wages paid to Austin MSA residents by
Certain Affinity: _____

7. Incentive amount requested: _____

8. Project's primary place of business (address): _____

9. List of all Permanent Facility locations
(address): _____

Is Project's primary place of business a
headquarters or a production office? _____

10. Date of informational meeting with the City's
Small and Minority Business Resources
Department (SMBR): _____

11. Has the Company provided SMBR with a list of vendors contacted and the amount spent with each
vendor for the scopes of work identified for the project as required by Section 1.05 of the Agreement?

☐ Yes

☐ No

12. In episodes solely within the Company's control, did each episode of the production's end credits display
the Austin Film Commission's "Made in Austin" logo and the words "Thank you to the City of Austin
Economic Development Department for its financial support of this production. Filmed on location in
Austin, Texas, U.S.A." for a reasonable amount of time, comparable to the amount of time allotted to
other credited entities?

☐ Yes

☐ No

13. Did the Company provide documentation of its good faith efforts to obtain network and guild approvals for
episodes it does not have sole control of credits to request insertion of the Austin Film Commission's
"Made in Austin" logo and the words "Filmed on location in Austin, Texas, U.S.A. Thank you to the City of
Austin Economic Development Department for its financial support of this production." for a reasonable
amount of time, comparable to the amount of time allotted to other credited entities.

☐ Yes

☐ No

Exhibit D

Creative Content Incentive Program Final Report

Project:

Project Type:

Production Company: Certain Affinity

14. Were all workers during production paid at least union wages, and were all workers provided benefits equivalent to union benefits, including worker's compensation?
☐ Yes ☐ No ☐ Not applicable
15. Were all workers during production paid at least \$13.30 per hour, and were all workers provided health insurance benefits?
☐ Yes ☐ No ☐ Not applicable
16. Were all employee benefits, including health insurance benefits, extended to same-sex partners and their dependents?
☐ Yes ☐ No
17. Did the Company comply throughout production, with Chapter 2264 of the Texas Local Government Code?
☐ Yes ☐ No
18. I, the authorized representative for Certain Affinity, hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement. I further certify that Certain Affinity has complied fully with all terms of the Creative Content Incentive Program Agreement, and that the Company is not delinquent in a tax or other obligation owed to the City of Austin, nor is owned or under common control of an entity that is delinquent in a tax or other obligation owed to the City of Austin. I understand that providing a false statement regarding the Company's compliance or non-compliance with the terms of the agreement may subject Certain Affinity to not receive incentives or the City seeking remedies.

Signature: _____

Printed Name: _____

Title (Chief Financial Officer or equivalent): _____

Date: _____

State of Texas
County of Travis

This instrument was acknowledged before me on _____ by _____,
(Date) (Name of Officer)

_____, of Certain Affinity, a for-profit corporation, on behalf of Certain Affinity.

Notary Public's Signature

(Personalized Seal)